Supreme Court, U.S.
FILED
AUG 1 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1883

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

TRUCKEE-CARSON IRRIGATION DISTRICT; DAVID L. MATLEY and CHRISTINE L. MATLEY FAMILY TRUST, et al.,

Petitioners,

vs.

UNITED STATES OF AMERICA and PYRAMID LAKE PAIUTE TRIBE OF INDIANS,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE STATES OF NEVADA, ARIZONA AND WASHINGTON IN SUPPORT OF PETITIONER

BRIAN McKAY
Attorney General of
the State of Nevada

Heroes Memorial Building
Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-4170

MARGARET A. TWEDT
Deputy Attorney
General

BRIAN CHALLY*
Deputy Attorney
General

*Attorney of Record

(Additional counsel listed on inside cover)

BEST AVAILABLE COPY

HONORABLE ROBERT K. CORBIN
Attorney General
State of Arizona

HONORABLE KENNETH O. EIKENBERRY
Attorney General
State of Washington

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICUS CURIAE	1
ARGUMENT.	7
I. The Ninth Circuit decision conflicts with California v. United States.	7
A. The Ninth Circuit decision conflicts with Nevada water law by allowing DOI to interfere with the power of courts to administer their water rights decrees . .	8
B. The Ninth Circuit decision conflicts with this Court's interpretation of Section 8 in California	14
II. The Ninth Circuit decision raises an important federal question.	17
CONCLUSION	21

TABLE OF AUTHORITIES

Cases	Page
California v. United States, 438 U.S. 645 (1978)	5, 7, 14, 15, 16, 18, 20, 21
Colorado River Water Cons. Dist. v. United States, 424 U.S. 800 (1976)	2
Crandon v. U.S., ____ U.S. _____, 110 S. Ct. 997 (1990).	19
Green v. Block Laundry Co., 109 S. Ct. 1981 (1989). . . .	18
Montezuma Canal v. Smithville Canal, 218 U.S. 371 (1910). .	3
Nevada v. United States, 463 U.S. 110 (1983)	4
Salmon River Canal Co., Ltd. v. Bell Brand Ranches, 564 F.2d 1244, (9th Cir. 1977)	1
U.S. v. Alpine Land and Reservoir Co., 887 F.2d 207, 212 (9th Cir. 1989)	4, 5, 7, 10, 15, 18
United States v. Alpine Land & Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980), substantially aff'd, 697 F.2d 851 (9th Cir.), cert. denied, 464 U.S. 863 (1983)	9, 10

United States v. Orr Water Ditch Company, et al., Equity No. A-3 (D. Nev. Sept. 8, 1944) 9, 10

Statutory Provisions

5 U.S.C. § 706(2)(A). 10

Ariz. Rev. Stat. Ann. § 45.251 (1987) 1

Nev. Rev. Stat. § 533.090 (1989). 1

Nev. Rev. Stat. § 533.220(1) (1989). 3, 12

Nev. Rev. Stat. 533.310 (1989). 3, 12

Wash. Rev. Code Ann. § 90.03.240 (Supp. 1990). . . 1

Act of June 6, 1917, ch. 117, §§ 14-26, 1917 Wash. Laws 454-459. 1

Act of March 22, 1913, ch. 140, §§ 18-51, 1913 Nev. Stat. 195-205 . . . 1

McCarran Amendment, ch. 651, 66 Stat. 560 (1952), (codified at 43 U.S.C. § 666 (1982)). . 1, 2

Reclamation Act of 1902, ch. 1093, 32 Stat. 390 (1902), (codified at 43 U.S.C. §§ 371 et. seq. (1982)). 4, 11, 18, 19, 21

Other Authorities

Sup. Ct. R. 10.1(c) 7, 17

1 R. Clark, Waters and Water Rights (1967) 2

INTEREST OF AMICI CURIAE

The Amici Curiae states have long recognized the importance of general water rights adjudications. E.g., Act of March 22, 1913, ch. 140, §§ 18-51, 1913 Nev. Stat. 195-205; Act of June 6, 1917, ch. 117, §§ 14-26, 1917 Wash. Laws 454-459. A general adjudication determines the relative rights of the various claimants to the waters of a stream system. Ariz. Rev. Stat. Ann. § 45.251 (1987); Nev. Rev. Stat. § 533.090 (1989); Wash. Rev. Code Ann. § 90.03.240 (Supp. 1990). General adjudications and the resulting decrees constitute a vital part of state water law as the method of conclusively quantifying water rights. See Salmon River Canal Co., Ltd. v. Bell Brand Ranches, 564 F.2d 1244, 1249 (9th Cir. 1977).

In passing the McCarran Amendment, ch. 651, 66 Stat. 560 (1952), (codified

at 43 U.S.C. § 666 (1982)), Congress also recognized the importance of establishing a single continuous proceeding for water rights adjudications. Colorado River Water Cons. Dist. v. United States, 424 U.S. 800, 819 (1976). In § 666(a)(1), the Act waives the sovereign immunity of the United States as to comprehensive state water rights adjudications. Additionally, § 666(a)(2) of the Act provides that once there has been an adjudication and decree entered, holders of adjudicated water rights can subject the United States to the judgment, orders and decrees of the court having jurisdiction.

Administering and distributing water according to water rights decrees calls for continuing supervision. 1 R. Clark, Waters and Water Rights § 24.1, at 134 (1967). Under Nevada's adjudication procedures, the court issuing the decree

has continuing jurisdiction to control and supervise the distribution of water with the state engineer and water commissioners acting as officers of the court. Nev. Rev. Stat. §§ 533.220(1), 533.310 (1989). In the absence of legislative action providing an administrative procedure for supervising the distribution of water, the court is within its authority in appointing a water commissioner to carry out its decree of adjudication. Montezuma Canal v. Smithville Canal, 218 U.S. 371, 385 (1910).

This case concerns two water rights decrees, the Alpine and Orr Ditch decrees, and conflicting interpretations of one of their provisions that determines water duties - whether lands are bench or bottom lands. In 1986, the Department of Interior (DOI) required that water be delivered within the

Newlands Reclamation Project (Project) according to bench and bottom land classification maps developed by DOI. The Alpine court declined to use DOI's classification maps and adopted the maps of the Truckee-Carson Irrigation District (TCID), manager of the Project.[1]

On appeal, the Ninth Circuit Court of Appeals interpreted two provisions of the Reclamation Act of 1902, ch. 1093, 32 Stat. 390 (1902), (codified at 43 U.S.C. §§ 371 et. seq. (1982)). The court rejected TCID's argument that § 8 of the Reclamation Act precluded DOI from promulgating regulations that determined water duties. U.S. v. Alpine Land and Reservoir Co., 887 F.2d 207, 212 (9th Cir. 1989). Instead, the court held that DOI had rulemaking authority pursuant to

---

[1] TCID manages the Project pursuant to a contract with the United States. Nevada v. United States, 463 U.S. 110, 118 (1983).

§ 10 of the Reclamation Act to designate lands as bench or bottom lands, thus controlling water duties. Id. at 213. In fact, the lower court's ruling allows DOI, in the absence of congressional directives, to "regulate distribution, acquisition, and vested water rights if its regulations are not inconsistent with state law." Id. at 212.

The Amici Curiae states have two distinct reasons for requesting that the Court review this decision. First, the Ninth Circuit's holding directly conflicts with California v. United States, 438 U.S. 645 (1978). The Ninth Circuit decision, allowing DOI to determine water duties for the Project, contravenes state water rights law by undermining the continuing jurisdiction of the courts to administer their water rights decrees. Likewise, the Ninth Circuit decision subverts California's holding that § 8 of

the Reclamation Act requires federal agencies to comply with state water rights laws that are not inconsistent with congressional directives.

Secondly, the Ninth Circuit decision raises an important question of federal law which this Court should settle. The Ninth Circuit's interpretation of § 10 of the Reclamation Act misconstrues the relationship between sections 8 and 10, ignoring the express intent of Congress to defer to state water law.

If the Ninth Circuit's interpretation of § 10 is allowed to stand, DOI, by federal regulation, can affect the ability of courts to apply, interpret and enforce their water rights decrees in contravention of state water rights law. Applying the Ninth Circuit decision more broadly, DOI's judicially created regulatory authority can be used to establish a duplicative federal scheme of

water law. Accordingly, the Amici Curiae states have a significant interest in supporting this petition for certiorari and ask that the Court accept the case and reverse the lower court's decision.

ARGUMENT

I. The Ninth Circuit decision conflicts with California v. United States.

In California v. United States, 438 U.S. 645, 664, 668, 673, 678-79 (1978), this Court stated repeatedly that federal reclamation projects must comply with state water rights laws except where such laws are inconsistent with congressional directives. Because the Ninth Circuit's decision in U.S. v. Alpine Land and Reservoir Co. conflicts with Western water law and the mandate of California, this Court should review the decision. Sup. Ct. R. 10.1(c).

A. The Ninth Circuit decision conflicts with Nevada water law by allowing DOI to interfere with the power of courts to administer their water rights decrees.

This case involves two water rights decrees and a provision appearing in both decrees for determining water duties based upon land classifications. A dispute arose over the application of these land classifications within the Newlands Reclamation Project, a federal reclamation project in Nevada. The sources of water for the Project are the natural flow of the Carson River and diversions from the Truckee River through the Truckee Canal.

The United States initiated two adjudication proceedings in federal district court that resulted in water rights decrees controlling water deliveries to the Project. The first decree, known as the Orr Ditch decree,

involves the waters of the Truckee River. United States v. Orr Water Ditch Company, et al., Equity No. A-3 (D. Nev. Sept. 8, 1944). The other, the Alpine decree, determines the relative rights of claimants to the waters of the Carson River. Petitioners' App. 30-33; see United States v. Alpine Land & Reservoir Co., 503 F. Supp. 877 (D. Nev. 1980), substantially aff'd, 697 F.2d 851 (9th Cir.), cert. denied, 464 U.S. 863 (1983). The Alpine and Orr Ditch decrees expressly provide for the appointment of a water master and reserve the continuing jurisdiction of the courts. Petitioners' App. 33; Orr Ditch at 87.

The Alpine and Orr Ditch decrees also establish the water duties that particular types of properties are entitled to receive - 4.5 acre feet per acre (a.f.a.) for bench land and 3.5 a.f.a. for bottom land. Petitioners' App. 31; Alpine, 503

F. Supp. at 888; Orr Ditch at 10-11. In 1986, DOI adopted Interim Operating Criteria and Procedures (OCAP) requiring TCID to deliver Project water according to bench and bottom land classification maps developed by DOI. Petitioners' App. 60. The OCAP specifically provided that objections to the maps were to be resolved in the Alpine and Orr Ditch courts. Petitioners' App. 60, 69-70.

The Ninth Circuit Court of Appeals, reversing the Alpine court, held that when DOI promulgated the 1986 OCAP, it was acting within the scope of its regulatory authority under § 10 of the Reclamation Act. 887 F.2d 207, 213 (9th Cir. 1989). The Ninth Circuit remanded the case to the Alpine court to review the classifications under the arbitrary and capricious standard of review pursuant to 5 U.S.C. § 706(2)(A). Id.

The Ninth Circuit decision impermis-

sibly allows DOI to determine water duties for the Project, conflicting with § 8 of the Reclamation Act and this Court's interpretation of § 8 in California. Congress declared its deference to state water law in the Reclamation Act by including § 8, a state water law "savings clause." Section 8 provides, in part, that nothing in the Reclamation Act "shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State relating to the control, appropriation, use or distribution of water used in irrigation, or any vested right acquired thereunder." Reclamation Act of 1902, ch. 1093, 32 Stat. 390 (1902), (codified at 43 U.S.C. § 383 (1982)).

Nevada law states that once the order of determination is filed with the court in the statutory adjudication process, the distribution of water is "under the

supervision and control of the district court." Nev. Rev. Stat. § 533.220(1) (1989). Nevada law further provides that "the administration of the decree and the distribution of the water thereunder shall be under the supervision and control of the district court," even when the proceedings establishing the decree do not follow the statutory adjudication process. Nev. Rev. Stat. § 533.310 (1989). Contrary to state law, the Ninth Circuit decision places the "administration of the decree" within the regulatory authority of DOI, with only limited review by the court issuing the decree. Therefore, the decision conflicts with state law relating to the control, appropriation, use or distribution of water used in reclamation projects and governed by water decrees.

Nevada's concern with the Ninth Circuit's holding is not limited to this

Project and the Alpine and Orr Ditch decrees. This decision allows DOI to modify other water rights decrees when there is a reclamation project with decreed water rights.

As an example, distribution of water on the Humboldt River is governed by the Bartlett Decree and the Edwards Decree, both issued by the Sixth Judicial District Court of Nevada. The Humboldt Project, a Bureau of Reclamation project located in Pershing County, Nevada, uses water whose distribution is controlled by the Bartlett Decree as well as using water subsequently acquired by permit. In light of the Ninth Circuit decision, DOI could promulgate rules affecting provisions of the Bartlett Decree, with the Sixth Judicial District Court having limited review of these regulations. Such a result offends Nevada's water laws.

Accordingly, this Court should review the Ninth Circuit decision to preserve the district courts' ability to administer their water rights decrees as intended under state water law.

B. The Ninth Circuit decision conflicts with this Court's interpretation of Section 8 in California.

In California, the California State Water Resources Control Board imposed 25 conditions upon the appropriation and distribution of water in connection with the New Melones Dam, a federal reclamation project on the Stanislaus River. The Ninth Circuit Court of Appeals held that California could not condition its allocation of water to a federal reclamation project. This Court reversed the Ninth Circuit's holding and gave full recognition to the state's right to control the appropriation and distribution of reclamation waters. The Court

held that § 8 of the Reclamation Act indicates congressional intent to defer to both the substance and form of state water law. California, 438 U.S. at 675. The Court further held that state law regarding the acquisition and distribution of reclamation water applies, unless directly inconsistent with congressional directives. Id. at 674-675.

In the present case, the Ninth Circuit concluded that "in the absence of congressional directives, DOI can regulate distribution, acquisition, and vested water rights if its regulations are not inconsistent with state law." 887 F.2d at 212. This conclusion in no way follows from California but rather runs contrary to its holdings.

California specifically held that § 8 requires state law to control in two important respects: (1) DOI must purchase

and appropriate water rights "in strict conformity with state law" 438 U.S. at 665, and (2) distribution of reclamation water "would again be controlled by state law." Id. at 667. In contrast, the Ninth Circuit decision allows DOI to establish regulations paralleling state water law for the appropriation and distribution of waters associated with reclamation projects. As shown by the facts of this case, conflicts with state law will inevitably arise through the institution of a federal scheme of water law.

Additionally, California held that "the Reclamation Act of 1902 makes it abundantly clear that Congress intended to defer to the substance, as well as the form, of state water law. The Government's interpretation would trivialize the broad language and purpose of § 8." California, 438 U.S. at 675. By allowing

DOI to establish its own water regulations, even if not inconsistent with state water law, the Ninth Circuit decision trivialized the broad language and purpose of § 8. Instead of the congressional grant of deference required under § 8, the decision elevates federal regulations to the same status as state water rights law.

This Court should grant review to resolve the conflict with California and reaffirm congressional intent to defer to state water law.

II. The Ninth Circuit decision raises an important federal question.

The decision of the Ninth Circuit Court of Appeals raises an important question of federal law which has not been, but should be, settled by this Court. Sup. Ct. R. 10.1(c). The Ninth Circuit concluded that DOI's general administrative powers under § 10 overrode

the specific directive of § 8 to defer to state water law. 887 F.2d at 212. This interpretation defies the standard rules of statutory construction. More significantly, it drastically alters the respective roles of the states and federal government regarding appropriation and distribution of reclamation waters.

A specific statute takes precedence over a general statute. Green v. Block Laundry Co., 109 S. Ct. 1981 (1989).

Section 10 provides the general grant of authority for DOI to act and to make rules and regulations as "necessary and proper for the purpose of carrying the provisions of this Act into full force and effect." Reclamation Act of 1902, ch. 1093, 32 Stat. 390 (1902), (codified at 43 U.S.C. § 373 (1982)). California interpreted § 8 as specifically requiring DOI to comply with state water rights law in all respects not directly inconsistent

with congressional directives. 438 U.S. at 678. Therefore, under the general rules of statutory construction, the express congressional directive of § 8 should limit DOI's general administrative discretion under § 10.

This Court recently held that "[i]n determining the meaning of the statute, we look not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." Crandon v. U.S., ____ U.S. ____, 110 S. Ct. 997, 1001 (1990). The Ninth Circuit failed to consider how sections 8 and 10 relate to the Reclamation Act of 1902 as a whole and to its object and policy.

In California, this Court undertook such an analysis with respect to § 8. The Court recognized that, in ascertaining the meaning of the Reclamation Act, the history of irrigation and reclamation

before 1902 was "much fresher in the minds of those then in Congress than it is to us today." California, 438 U.S. at 648. After surveying statutory and judicial precedents related to the appropriation and use of water resources in the Western States, the Court noted that "[t]he history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress." 438 U.S. at 653 (emphasis added). The Court held that the legislative history of the Act makes it abundantly clear that Congress intended to defer to both the substance and form of state water law. Id. at 675.

The Ninth Circuit decision negates the "cooperative federalism" existing in

the state-federal relationship regarding regulation of water and exemplified by the Reclamation Act of 1902. Rather than purposeful and continued deference to and strict compliance with state water law, the Ninth Circuit would allow DOI to establish a federal scheme of regulations governing reclamation waters.

"A principal motivating factor behind Congress' decision to defer to state law was thus the legal confusion that would arise if federal water law and state water law reigned side by side in the same locality." California, 438 U.S. at 669. The Ninth Circuit decision will create legal confusion resulting from the duplication of two authorities over the same subject matter.

This misinterpretation of the Reclamation Act presents a significant federal question warranting review.

CONCLUSION

The Amici Curiae states believe that they have authority under congressional and judicial deference to administer the control, appropriation, use or distribution of their waters. Congress expressly preserved this authority by the inclusion of § 8 in the Reclamation Act. In California, this Court recognized § 8's required deference to state water rights law.

The Ninth Circuit's ruling that DOI's general powers under § 10 displace state powers under § 8 ignores the express language and legislative history of the Reclamation Act. Likewise, the ruling conflicts with California. The practical effect of the Ninth Circuit's decision, if allowed to stand, will be a reversal in the state's right to control the appropriation and distribution of reclamation waters and the creation of a

parallel system of federal water law. Such a profound change in policy should be reviewed by this Court. Accordingly, the petition for writ of certiorari should be granted.

Respectfully submitted,

BRIAN McKAY
Attorney General of the
State of Nevada

MARGARET A. TWEDT
Deputy Attorney General

BRIAN CHALLY*
Deputy Attorney General

*Attorney of Record